

Remarks

The Examiner's Office action mailed December 28, 2004, which rejected pending claims 1-42, has been reviewed. In view of the following remarks, Applicants respectfully submit that the application is in condition for allowance.

The Examiner rejected claims 1-5, 9, 18, and 32 as being anticipated under 35 U.S.C. § 102(e) by U.S. Patent No. 5,202,780, issued to Fussganger ("Fussganger").

The Examiner rejected claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Fussganger in view of U.S. Patent No. 6,104,513, issued to Bloom ("Bloom").

The Examiner rejected claims 7, 8, 10-12, 14-17, 19-31, and 33-42 under 35 U.S.C. § 103(a) as being unpatentable over Fussganger in view of U.S. Patent No. 6,477,154 B1 issued to Cheong et al. ("Cheong").

The Examiner rejected claim 13 under 35 U.S.C. § 103(a) as being unpatentable over Fussganger in view of Cheong and U.S. Patent No. 6,223,055 B1, issued to Cyr ("Cyr").

Thus, all rejections were made based upon Fussganger. The Examiner cited Fussganger at column 3, lines 55-60, column 2, lines 50-55, and the "waveguide 1" of Figure 1 as disclosing all of the limitations of claims 1, 9, and 32. Those cited sections are reproduced immediately below. All other rejections were based upon this initial rejection and citation.

The center has the reference number 10. It contains a so-called cable television head station 11, which delivers an optical signal with a wavelength λ_0 at its output. This optical signal contains all of the television and radio programs to be distributed to the subscribers, i.e., the cable television head station also includes the devices Column 2, lines 50-55.

. . . .
... with the subscriber-assigned wavelengths λ_9 to λ_{16} , which the multiplexer-demultiplexer separates into the individual signals and passes each of these individual signals, as shown, onto an optical waveguide, through which it reaches the inputs of the local switching center 12. Column 3, lines 51-60.

Claim 1 requires transmitting a data signal over a first wavelength on a single fiber strand; and transmitting a radio frequency signal over a second wavelength on the same single fiber strand.

Fussganger does not disclose or teach transmitting a data signal over a first wavelength on a single fiber strand and transmitting a radio frequency signal over a second wavelength where the first and second wavelengths are on the same single fiber strand. Further,

BEST AVAILABLE COPY

Fussganger does not teach a radio frequency signal. The required limitations are not disclosed or taught in the sections cited by the Examiner or anywhere in Fussganger.

At column 2, lines 50-55, Fussganger states that a television head station delivers an optical signal that contains television and radio programs. Fussganger does not teach that the television and radio programs are a radio frequency signal. No where does Fussganger even mention radio frequency signals. The television and radio program could be transmitted in any number of forms, formats, or protocols other than as radio frequency signals. Fussganger does not teach transmitting a radio frequency signal over a second wavelength on the same single fiber strand.

Fussganger does not teach transmitting a data signal and a radio frequency on a single fiber strand. The waveguide 1 of Figure 1 is not a single fiber strand.

A waveguide may be any number of structures, including a microwave waveguide or an optical waveguide. An optical waveguide may be a fiber bundle, a thin-film optical waveguide, a channel waveguide, or something else. The waveguide 1 of Figure 1 could be any number of structures. Fussganger does not teach what type of structure it is. Fussganger does not teach a single fiber strand.

Applicants' claims expressly claim a single fiber strand. It would be a stretch for the Examiner to use the Fussganger "waveguide" to reject Applicants' single fiber strand claims. The Examiner cannot import teachings into Fussganger to meet Applicants' claim limitations.

Since none of the other references cited by the Examiner contain the missing limitations, and the Examiner has not alleged that they do, the claims are believed patentable over all cited references, alone or in combination. Applicants do not believe a discussion of the other references is required since they do not contain the cited limitations, and the Examiner has not alleged that any other reference contains the cited limitations.

Fussganger does not disclose, teach, or suggest the system of Applicants' claim 1. Therefore, Applicants submit that claim 1 is allowable. Withdrawal of the rejection respectfully is requested.

The above arguments apply to the rejections of claims 18, 19, 32, and 33. No other sections of Fussganger were identified to meet the required limitations.

Applicants' have demonstrated that claims 1, 18, 19, 32, and 33 are patentable over the cited references. Applicants respectfully request withdrawal of the rejections of claims 1, 18, 19, 32, and 33.

Additionally, regarding the 103 rejection of claims 19 and 33, the Examiner references elements 109-1 and 109-2 in the Cheong patent. There is no element 109-1 or 109-2 in Cheong. Therefore, this rejection is not valid for this additional reason since no evidence for this rejection has been provided.

Also regarding the 103 rejection of claims 19 and 33, the Examiner did not provide a teaching or motivation to combine Fussganger and Cheong at all. The Examiner did not provide a teaching or motivation to combine the references to meet any claimed limitation.

The Examiner merely copied the reason the Examiner used in the prior Office action to modify the Cheong reference. No attempt has been made by the Examiner to provide any objective proof of a teaching or suggestion to combine the Fussganger and Cheong references.

The Examiner did not provide any reasoned statement of proof or any objective evidence from Cheong or any other reference under the 103 rejection to meet the claimed limitation. The Examiner cannot reject Applicants' claim without such a reasoned statement of proof or objective evidence. The Examiner has not made a prima facie case of obviousness.

The Examiner must show proof that the claimed limitation is taught in the cited reference. The Examiner must provide detailed explanations of how the prior art renders a claim obvious or anticipated, including "reasoned findings" identifying structures and reasons for identifying, modifying, and/or combining structures. *In re Lee*, 61 USPQ2d 1430 (Fed. Cir. 2002). The Examiner must provide objective evidence and proper authority for the rejection. *In re Lee* at 1435.

The Examiner may not base a rejection on conclusory statements. There must be a search and analysis of the prior art, including evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and/or combine the references relied on as evidence of anticipation or obviousness. *In re Lee* at 1433. The Examiner can satisfy the burden "only by showing some objective teaching in the prior art." *In re Lee* at 1434. Conclusory statements from the Examiner cannot be used in place of an actual teaching in the cited reference.

In re Lee at 1434. This factual inquiry is material to patentability, and can not be resolved on subjective belief and unknown authority. *In re Lee* at 1434.

The Examiner stated that "it would have been obvious to one of ordinary skill in the art at the time of the invention that different nodes in Fussganger would be configured to transmit data and RF over similar corresponding wavelengths for the benefit of reduced wavelength assignment for similar functions in the network and aggregating similar signals in the network a common service points." Applicants do not know what this statement means and hereby request a reasoned statement for the same. What is meant by reduced wavelength assignment, why would "similar corresponding wavelengths" be used, how does this statement relate to Applicants' claims and Fussganger and Cheong, why would this be desirable to accomplish aggregating similar signals in a network, why are similar signals aggregated, what are the similar signals being aggregated (i.e. are they RF signals, data signals, or something else), and what do common service points have to do with either Applicants' claims or Fussganger? Further, Fussganger never mentions RF. So, how can Fussganger be configured to transmit data and RF over similar corresponding wavelengths?

The Examiner has made this statement with no proof whatsoever and without fully explaining this statement, which Applicants find confusing. Again, the Examiner must provide detailed explanations of how the prior art renders a claim obvious or anticipated, including "reasoned findings" identifying structures and reasons for identifying, modifying, and/or combining structures. *In re Lee*, 61 USPQ2d 1430 (Fed. Cir. 2002). The Examiner must provide objective evidence and proper authority for the rejection. *In re Lee* at 1435. The Examiner may not base a rejection on conclusory statements. The Examiner has not complied with this requirement.

Further, the Examiner stated that Cheong discloses that individual nodes transmit data and RF signals over different wavelengths. However, the Examiner did not provide a citation for this statement and has not provided any proof of this statement. The Examiner did not identify any portion of Cheong in the Office action that corroborates this statement. This also violates *In re Lee*.

Specifically regarding claim 33, the Examiner did not identify a data matrix or a radio frequency matrix in the cited references. Neither Fussganger nor Cheong teach a data matrix or a radio frequency matrix and neither include the further limitations of claim 33.

For these additional reasons, the claims are believed patentable over all cited references, alone or in combination. Therefore, Applicants respectfully request withdrawal of the rejections of claims 19 and 33 for these additional reasons.

Because the claims depending directly or indirectly from claims 1, 18, 19, 32, and 33 include all of the limitations of their respective base claims, which are believed to be patentable, these claims also are believed to be allowable. Withdrawal of the rejections of those claims depending from claims 1, 18, 19, 32, and 33 respectfully is requested.

Because claims 1, 18, 19, 32, and 33 are believed patentable, it is not necessary to discuss patentable limitations of claims depending there from or the references or rejections. However, the lack of a discussion of patentable limitations of those dependent claims should not be construed to mean that there are not patentable limitations in those dependent claims.

Fussganger does not teach, disclose, or suggest the limitations of Applicants' claims. Moreover, there is no motivation, teaching, or suggestion to combine Fussganger with any of the systems of Cheong, Bloom, and/or Cyr. Neither Fussganger alone nor in combination with Cheong, Bloom, and/or Cyr teaches the systems and methods of Applicants claims. For these additional reasons, withdrawal of the rejection of the claims respectfully is requested.

If the Examiner does not agree with Applicants, Applicants respectfully request the specific location where the above limitations are taught. The specific language of the citation is requested so that Applicants may more readily understand the Examiner's position.

If the Examiner continues to believe that any portion or portions of the claims can be rejected over Fussganger, alone or in combination with another reference, Applicants specifically request that the Examiner respond to all arguments made in the Remarks section of this Response above, including a response for each claim with a detailed identification of which specific section of Fussganger, Cheong, and the other references is used to reject the claim limitation and a detailed explanation of how that section anticipates or obviates the claim limitation. Applicants also request a specific and detailed explanation of each teaching to combine Fussganger and another reference or reason to modify Fussganger to obtain the claimed limitation, including a reasoned statement as required by Lee and an identification of the reason to combine as found in Fussganger or the other reference. Such a detailed explanation is needed by Applicants so that Applicants can adequately respond to a continued rejection. Applicants thank the Examiner in advance for cooperation in this respect.

The references cited by the Examiner and made of record have been reviewed by Applicants. Applicants have no further remarks with regard to the cited references.

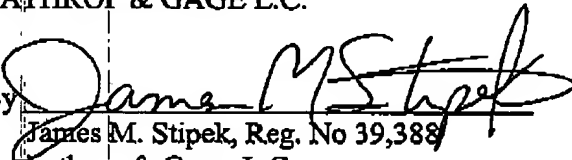
Based on the foregoing, it is submitted that the Applicants' invention as defined by the claims is patentable over the references of record. Issuance of a Notice of Allowance is solicited.

Applicants' attorney welcomes the opportunity to discuss the case with the Examiner in the event that there are any questions or comments regarding the response or the application.

This is intended to be a complete response to the Examiner's Office action mailed on December 28, 2004.

Respectfully Submitted,
LATHROP & GAGE L.C.

By



James M. Stipek, Reg. No 39,388
Lathrop & Gage, L.C.
2345 Grand Boulevard, Suite 2300
Kansas City, MO 64108
Tel: (816) 460-5848
Fax: (816) 292-2001
Attorney for Applicant(s)

TEST AVAILABLE COPY